

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07OD-188

Oahu

Cancellation of Grant of Non-Exclusive Easement Bearing General Lease No. S-5172 to Stanley Chun and Katherine S. Chun and Grant of Term, Non-Exclusive Easement to Gilbert K. Chun and Leialoha K. Chun for Seawall Purposes, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:026 (seaward).

APPLICANT:

Gilbert K. Chun and Leialoha K. Chun, husband and wife, Tenants by Entirety, whose business and mailing address is 47-047 Kamehameha Highway, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13 and 53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government reclaimed land of Kahaluu, situated at Kahaluu, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-019:026 (seaward) as shown on the attached map labeled Exhibit A.

AREA:

.030 acres, more or less.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X _____

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CURRENT USE STATUS:

Encumbered by a non-exclusive easement bearing Land Office Deed No. S-5172 to Stanley Chun and Katherine S. Chun.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

\$30,640 based on Staff Appraiser's calculations of September 11, 2007.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states " Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS:

None.

REMARKS:

At its meeting of October 10, 1986, under agenda item F-12, the Board approved as amended a non-exclusive easement for fifty (50) years to Stanley and Katherine S. Chun for seawall purposes fronting their privately-owned property identified by TMK:(1) 4-7-019:26.

In 1986, the State Land Surveyor apprised the Chuns and the department that the shoreline along the seaward face of the seawall was acceptable to the State of Hawaii, however, the seawall and reclaimed land seaward of their fee property had been constructed on

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State tidal and beach lands. The Chuns had stated that the seawall and reclaimed land was in place when they purchased the adjoining fee property and that no survey was conducted prior to they acquiring title to their fee property. The Chuns were fined \$500.00 for the encroachment of the seawall on State land. The fine has since then been paid in full.

The subject easement is currently encumbered under General Lease No. S-5172, commencing October 10, 1986 through October 9, 2036, with rental re-openings occurring on the 10th, 20th, 30th, and 40th years of the lease term. Rental payments for General Lease No. S-5172 are made on an annual basis.

Land Division, in an effort to streamline its operation for some of the earlier seawall easements in which annual payments and rental re-openings are being conducted, is attempting to convert these leases to new leases for fifty-five (55) years term at a one-time consideration amount.

The Staff Appraiser had calculated a one-time consideration amount for a fifty-five (55) year easement for seawall purposes at \$30,640. (Exhibit "B"). The Lessees are agreeable to a new lease for fifty-five (55) years, and have already submitted a cashier's check payable to the Land Division in the amount of \$30,640, anticipating a favorable consideration of this request.

Comments were not solicited from any other government agency as this is a continuation of the existing use of the property. However, staff did check with the Office of Conservation and Coastal Lands, who had no objections to this request. The Office of Hawaiian Affairs had no objections provided that the consideration amount for the seawall easement would be valued at fair market rent.

The Lessees have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

- A. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1)4-7-019:26, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
- B. Authorize the cancellation of General Lease No. S-5172 to Stanley and Katherine S. Chun effective upon execution of the new easement document, subject to:
 1. The standard terms and conditions of the most current cancellation form;

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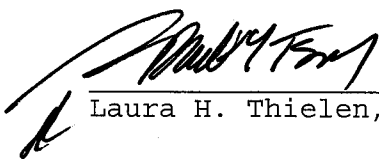
2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State of Hawaii;
- C. Authorize the issuance of a term, non-exclusive easement to Gilbert K. Chun and Leialoha K. Chun covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key:(1)4-7-019:26, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,

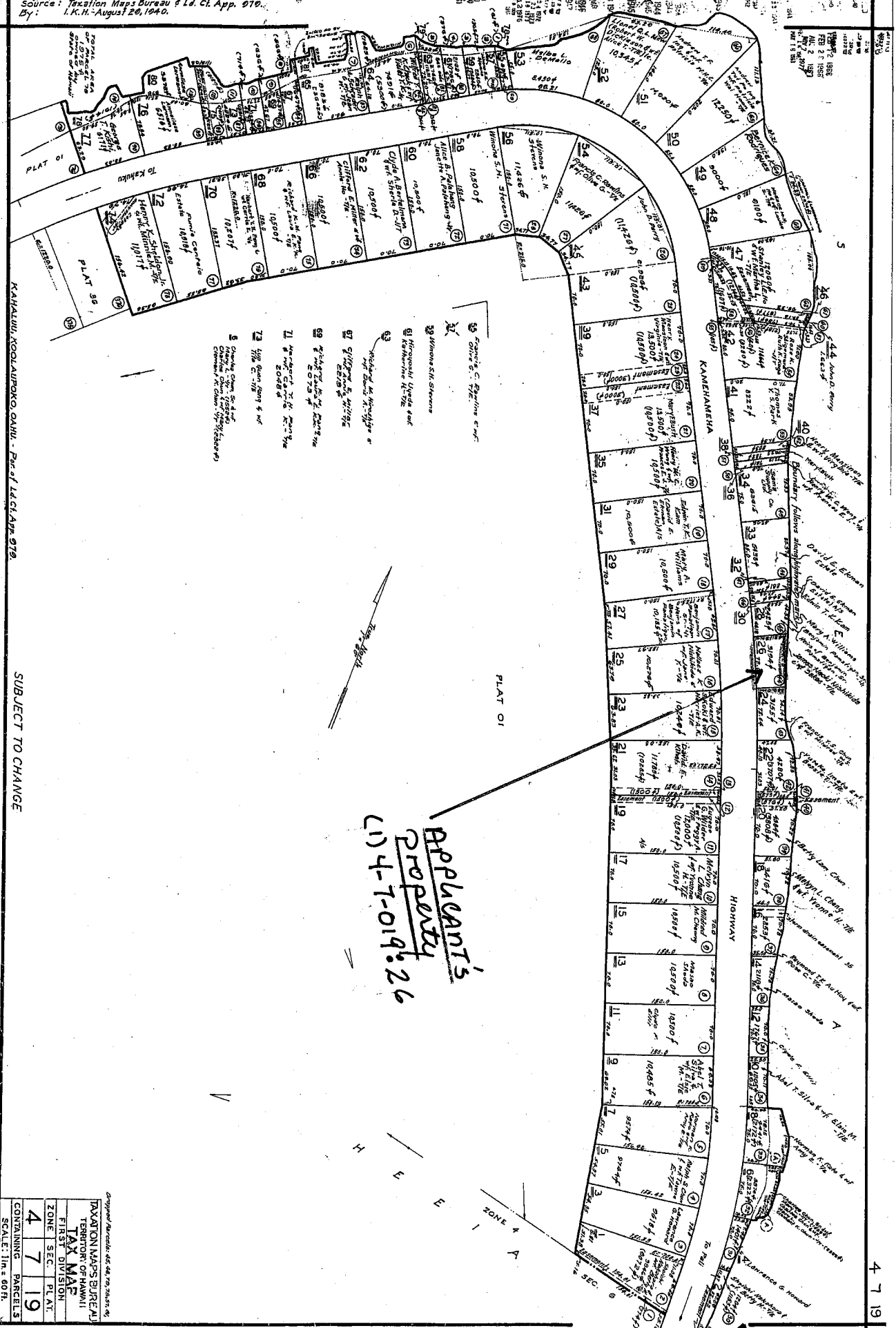


Steve Lau
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



KAMENAKA, KOOLAUPOKO, OAHU - Plat of Ld. App. 970

SUBJECT TO CHANGE

Original Parcel: 44-70-24-01, 44-70-24-02, 44-70-24-03, 44-70-24-04, 44-70-24-05, 44-70-24-06, 44-70-24-07, 44-70-24-08, 44-70-24-09, 44-70-24-10, 44-70-24-11, 44-70-24-12, 44-70-24-13, 44-70-24-14, 44-70-24-15, 44-70-24-16, 44-70-24-17, 44-70-24-18, 44-70-24-19, 44-70-24-20, 44-70-24-21, 44-70-24-22, 44-70-24-23, 44-70-24-24, 44-70-24-25, 44-70-24-26, 44-70-24-27, 44-70-24-28, 44-70-24-29, 44-70-24-30, 44-70-24-31, 44-70-24-32, 44-70-24-33, 44-70-24-34, 44-70-24-35, 44-70-24-36, 44-70-24-37, 44-70-24-38, 44-70-24-39, 44-70-24-40, 44-70-24-41, 44-70-24-42, 44-70-24-43, 44-70-24-44, 44-70-24-45, 44-70-24-46, 44-70-24-47, 44-70-24-48, 44-70-24-49, 44-70-24-50, 44-70-24-51, 44-70-24-52, 44-70-24-53, 44-70-24-54, 44-70-24-55, 44-70-24-56, 44-70-24-57, 44-70-24-58, 44-70-24-59, 44-70-24-60, 44-70-24-61, 44-70-24-62, 44-70-24-63, 44-70-24-64, 44-70-24-65, 44-70-24-66, 44-70-24-67, 44-70-24-68, 44-70-24-69, 44-70-24-70, 44-70-24-71, 44-70-24-72, 44-70-24-73, 44-70-24-74, 44-70-24-75, 44-70-24-76, 44-70-24-77, 44-70-24-78, 44-70-24-79, 44-70-24-80, 44-70-24-81, 44-70-24-82, 44-70-24-83, 44-70-24-84, 44-70-24-85, 44-70-24-86, 44-70-24-87, 44-70-24-88, 44-70-24-89, 44-70-24-90, 44-70-24-91, 44-70-24-92, 44-70-24-93, 44-70-24-94, 44-70-24-95, 44-70-24-96, 44-70-24-97, 44-70-24-98, 44-70-24-99, 44-70-24-100

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
ZONE	SEC.	PLAT	
4	7	19	
CONTAINING PARCELS			
SCALE: 1 in = 60 ft.			

EXHIBIT A

**TABLE OF CALCULATIONS
EASEMENT LEASE RENT CALCULATION**

9/11/07

GL S-5172

Seawall

Lessee:	Stanley & Katherine
TMK:	Chun
Fast Land Area (sq. ft.):	(1) 4-7-19, Parcel 26
Easement Area (sq. ft.):	3,194
Date of Value:	1,314
	October 10, 2006

Lump Sum Payment Calculation

Appraised Fast Land Value*	\$138,700
Per Sq. Ft.	\$43.43
Land Adjustment (fast land)	90%
Disutility Factor	\$39.08
Easement Area	1,314
Easement Land Value	\$51,351.12
Multiplied By 4% Rate of Return	4%
Annual Rent (Rounded)	\$2,054
<u>Present Value Calculation</u>	
Factor for 55 Years at 7%	14.9157
Total (Rounded)	\$30,640

* Fast land appraised by Yamaguchi & Yamaguchi, Inc.

EXHIBIT "B"